

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

KENNETH D. JONES, §
§
Plaintiff, §
§
v. § Civil Action No. 4:21-cv-0532
§
SUN WEST MORTGAGE COMPANY, INC., §
§
Defendant. §

**SUN WEST MORTGAGE COMPANY, INC.'S ORIGINAL ANSWER TO
PLAINTIFF'S ORIGINAL COMPLAINT**

Defendant Sun West Mortgage Company, Inc. (“Sun West”) answers Plaintiff’s Complaint as follows:

1. Sun West denies the allegations in the first sentence of paragraph 1. With respect to the allegations in the second sentence of paragraph 1, Sun West admits only Plaintiff makes such allegations, and denies any remaining allegations in paragraph 1.
2. Sun West denies the allegations in paragraph 2. Sun West further denies Plaintiff is entitled to the relief he seeks in paragraph 2 or any other relief.
3. The allegations in paragraph 3 state legal conclusions to which no response is required. To the extent a response is required, Sun West admits only that Plaintiff is a natural person residing in Texas, and denies all other allegations in paragraph 3.
4. The allegations in paragraph 4 are of no effect as Sun West has appeared in this lawsuit and does not contest service.
5. The allegations in paragraph 5 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

6. Sun West denies the allegations in paragraph 6.

7. The allegations in paragraph 7 state legal conclusions to which no response is required. To the extent a response is required, Sun West admits the Court has subject matter jurisdiction.

8. The allegations in paragraph 8 state legal conclusions to which no response is required. To the extent a response is required, Sun West admits venue is proper.

9. With respect to the allegations in paragraph 9, Sun West states the filings in the referenced bankruptcy case speak for themselves and denies any restatement, paraphrasing, or characterization of the effect of those filings.

10. With respect to the allegations in paragraph 10, Sun West admits only that the referenced Schedule D speaks for itself and Plaintiff purports to have attached a true and correct copy of relevant portions of Schedule D as Exhibit A. Sun West denies any restatement, paraphrasing, or characterization of the effect of the referenced Schedule D.

11. The allegations in paragraph 11 state legal conclusions to which no response is required. To the extent a response is required, Sun West admits only the referenced Statement of Intention and regulation speak for themselves, and denies any restatement, paraphrasing, or characterization of the effect of the referenced Statement of Intention and regulation.

12. With respect to the allegations in paragraph 12, Sun West admits only that the referenced Statement of Intention speaks for itself and Plaintiff purports to have attached a true and correct redacted copy as Exhibit B. Sun West denies any restatement, paraphrasing, or characterization of the effect of the referenced Statement of Intention.

13. With respect to the allegations in paragraph 13, Sun West admits only that the referenced 341 Notice and statute speak for themselves, and denies any restatement, paraphrasing or characterization of the effect of the referenced 341 Notice and statute.

14. With respect to the allegations in paragraph 14, Sun West admits only that the Motion for Relief from Automatic Stay speaks for itself, and denies any statement, paraphrasing, or characterization of the effect of the Motion for Relief from Automatic Stay.

15. With respect to the allegations in paragraph 15, Sun West admits only that the referenced Order speaks for itself, and denies any restatement, paraphrasing, or characterization of the effect of the referenced Order.

16. With respect to the allegations in paragraph 16, Sun West admits only that the referenced Order speaks for itself and Plaintiff purports to have attached a true and correct copy as Exhibit C. Sun West denies any restatement, paraphrasing, or characterization of the effect of the referenced Order.

17. With respect to the allegations in paragraph 17, Sun West admits only that the referenced Discharge Order speaks for itself, and denies any restatement, paraphrasing, or characterization of the effect of the Discharge Order.

18. With respect to the allegations in paragraph 18, Sun West admits only that the referenced Discharge Order speaks for itself and Plaintiff purports to have attached a true and correct redacted copy as Exhibit D. Sun West denies any restatement, paraphrasing, or characterization of the effect of the referenced Discharge Order.

19. With respect to the allegations in the first sentence of paragraph 19, Sun West admits only the docket and filings in the bankruptcy case speak for themselves concerning notice of the Discharge Order, and Sun West denies any restatement, paraphrasing, or characterization of

the effect of the alleged notice. The allegations in the second sentence of paragraph 19 state legal conclusions to which no response is required. To the extent a response is required, Sun West admits only the Discharge Order speaks for itself, and denies any restatement, paraphrasing, or characterization of the effect of the Discharge Order.

20. With respect to the allegations in paragraph 20, Sun West admits only the docket and filings in the bankruptcy case speak for themselves, and denies any restatement, paraphrasing, or characterizations of the effect of the docket and filings in the bankruptcy case.

21. With respect to the allegations in paragraph 21, Sun West admits only the docket and filings in the bankruptcy case speak for themselves, and denies any restatement, paraphrasing, or characterizations of the effect of the docket and filings in the bankruptcy case.

22. With respect to the allegations in paragraph 22, Sun West admits only the docket and rulings in the bankruptcy case speak for themselves, and denies any restatement, paraphrasing, or characterizations of the effect of the docket and filings in the bankruptcy case.

23. Sun West denies the allegations in paragraph 23.

24. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 24, and therefore denies the allegations.

25. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 25, and therefore denies the allegations.

26. With respect to the allegations in the first sentence of paragraph 26, Sun West admits only the document attached as Exhibit E purports to be a true and correct redacted screenshot from Plaintiff's cell phone and speaks for itself, and denies any restatement, paraphrasing, or characterizations of the effect of Exhibit E. Sun West lacks knowledge and

information sufficient to form a belief about the truth of the remaining allegations in paragraph 26, and therefore denies the allegations.

27. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 27, and therefore denies the allegations.

28. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 28, and therefore denies the allegations.

29. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 29, and therefore denies the allegations.

30. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 30, and therefore denies the allegations.

31. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 31, and therefore denies the allegations.

32. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 32, and therefore denies the allegations.

33. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 33, and therefore denies the allegations.

34. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 34, and therefore denies the allegations.

35. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 35, and therefore denies the allegations.

36. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 36, and therefore denies the allegations.

37. Sun West lacks knowledge and information sufficient to form a belief about the truth of the allegations in paragraph 37, and therefore denies the allegations.

38. Sun West denies the allegations in paragraph 38.

39. Plaintiff alleges the alleged conduct in paragraph 39 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 39.

40. With respect to the allegations in the first sentence of paragraph 40, Sun West admits only the document attached as Exhibit F purports to be a true and correct redacted screenshot documenting the March 31, 2020 voicemail, and denies any restatement, paraphrasing, or characterizations of the effect of Exhibit F. Sun West lacks knowledge and information sufficient to form a belief about the truth of the remaining allegations in paragraph 40, and therefore denies the allegations.

41. Plaintiff alleges the alleged conduct in paragraph 41 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 41.

42. Plaintiff alleges the alleged conduct in paragraph 42 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 42.

43. Plaintiff alleges the alleged conduct in paragraph 43 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 43.

44. Plaintiff alleges the alleged conduct in paragraph 44 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 44.

45. Plaintiff alleges the alleged conduct in paragraph 45 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 45.

46. Plaintiff alleges the alleged conduct in paragraph 46 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 46.

47. Plaintiff alleges the alleged conduct in paragraph 47 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 47.

48. Plaintiff alleges the alleged conduct in paragraph 48 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 48.

49. Plaintiff alleges the alleged conduct in paragraph 49 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 49.

50. Plaintiff alleges the alleged conduct in paragraph 50 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 50.

51. Plaintiff alleges the alleged conduct in paragraph 51 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 51.

52. Plaintiff alleges the alleged conduct in paragraph 52 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 52.

53. Plaintiff alleges the alleged conduct in paragraph 53 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 53.

54. Plaintiff alleges the alleged conduct in paragraph 54 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 54.

55. Plaintiff alleges the alleged conduct in paragraph 55 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 55.

56. Plaintiff alleges the alleged conduct in paragraph 56 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 56.

57. Plaintiff alleges the alleged conduct in paragraph 57 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 57.

58. Plaintiff alleges the alleged conduct in paragraph 58 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 58.

59. Plaintiff alleges the alleged conduct in paragraph 59 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 59.

60. Plaintiff alleges the alleged conduct in paragraph 60 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 60.

61. Plaintiff alleges the alleged conduct in paragraph 61 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 61.

62. Plaintiff alleges the alleged conduct in paragraph 62 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 62.

63. Plaintiff alleges the alleged conduct in paragraph 63 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 63.

64. Plaintiff alleges the alleged conduct in paragraph 64 is an example of the alleged conduct in paragraph 38, which Sun West already has denied. On the basis of its denial of the alleged conduct in paragraph 38, Sun West also denies the allegations in paragraph 64.

65. With respect to the allegations in paragraph 65, Sun West admits only the document attached as Exhibit G purports to be a true and correct copy of a December 22, 2020 notice, and

denies any restatement, paraphrasing, or characterizations of the effect of Exhibit G. Sun West denies any remaining allegations in paragraph 65.

66. Sun West reasserts all previous responses to the allegation incorporated into paragraph 66.

67. Sun West denies the allegations in paragraph 67, including each of its subparts.

68. Sun West denies the allegations in paragraph 68.

69. Sun West denies the allegations in paragraph 69. Further, Sun West denies Plaintiff's attorney fees are necessary or reasonable.

70. Sun West reasserts all previous responses to the allegations incorporated into paragraph 70.

71. With respect to the allegations in the first sentence of paragraph 71, Sun West lacks knowledge and information sufficient to form a belief about the truth of Plaintiff's expectations, and therefore denies the allegations. Sun West further denies any characterization of its conduct as harassment. Sun West denies the allegations in the second and third sentences of paragraph 71.

72. Sun West denies the allegations in paragraph 72.

73. Sun West reasserts all previous responses to the allegations incorporated into paragraph 73.

74. The allegations in paragraph 74 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

75. Sun West denies the allegations in paragraph 75.

76. Sun West denies the allegations in paragraph 76.

77. Sun West denies the allegations in paragraph 77.

78. Sun West denies the allegations in paragraph 78.

79. Sun West denies the allegations in paragraph 79.

80. The allegations in the first sentence of paragraph 80 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations. Sun West denies the allegations in the second sentence of paragraph 80.

81. The allegations in paragraph 81 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

82. The allegations in paragraph 82 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

83. Sun West denies the allegations in paragraph 83.

84. Sun West reasserts all previous responses to the allegations incorporated into paragraph 84.

85. The allegations in paragraph 85 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

86. Sun West denies the allegations in paragraph 86.

87. Sun West denies the allegations in paragraph 87.

88. Sun West denies the allegations in paragraph 88.

89. Sun West denies the allegations in paragraph 89.

90. Sun West denies the allegations in paragraph 90.

91. Sun West denies the allegations in paragraph 91.

92. The allegations in paragraph 92 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

93. The allegations in paragraph 93 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

94. Sun West denies the allegations in paragraph 94.

95. Sun West denies that it or any of its employees or agents acted wrongfully or improperly. The remainder of the allegations in paragraph 95 state legal conclusions to which no response is required. To the extent a response is required, Sun West denies the allegations.

96. Sun West denies the allegations in paragraph 96.

97. Sun West lacks knowledge and information sufficient to form a belief about the truth of Plaintiff's allegations in paragraph 97 concerning his belief, and therefore denies such allegations. Sun West denies all remaining allegations in paragraph 97.

98. Sun West lacks knowledge and information sufficient to form a belief about the truth of Plaintiff's allegations in paragraph 98 concerning his belief, and therefore denies such allegations. Sun West denies all remaining allegations in paragraph 98.

99. Sun West lacks knowledge and information sufficient to form a belief about the truth of Plaintiff's allegations in paragraph 99 concerning his belief, and therefore denies such allegations. Sun West denies all remaining allegations in paragraph 99.

100. Sun West lacks knowledge and information sufficient to form a belief about the truth of Plaintiff's allegations in paragraph 100 concerning his belief, and therefore denies such allegations. Sun West denies all remaining allegations in paragraph 100.

101. Sun West denies the allegations in paragraph 101.

102. Sun West denies Plaintiff is entitled to any of the relief sought in the Prayer of the Complaint.

103. Except as expressly admitted, qualified, or otherwise pleaded, Sun West denies all allegations in Plaintiff's Complaint, including allegations contained in any heading.

SUN WEST'S AFFIRMATIVE AND OTHER DEFENSES

Without conceding the burden of proof, Sun West asserts the following defenses:

1. Plaintiff has failed to state a claim upon which relief may be granted.
2. Plaintiff's recovery is barred by the defenses of unclean hands, waiver, abandonment, acquiescence, and/or other equitable defenses.
3. Plaintiff has failed to state a claim for recovery of attorneys' fees and costs.
4. Plaintiff's recovery of punitive damages is barred to the extent Plaintiff seeks them for an alleged violation of the discharge injunction.
5. Plaintiff's claim for punitive damages is barred and limited by the United States Constitution, the Texas Constitution, and the Texas Civil Practice and Remedies Code, including without limitation the limitations and constraints of Due Process found in the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 19 of the Texas Constitution.
6. Plaintiff's invasion of privacy claim is preempted by the Fair Credit Reporting Act.
7. Plaintiff's claims are barred or limited to the extent Plaintiff's damages resulted from the conduct of third parties.
8. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel (in all its forms) and ratification.
9. Plaintiff's claims are barred, in whole or in part, by the doctrine of bona fide error.
10. Plaintiff's claims are barred or limited to the extent Sun West sent correspondence required by the applicable statutes and regulations.
11. To the extent Plaintiff is alleging or attempting to allege a claim for a discharge violation, the Court lacks jurisdiction over Plaintiff's claim for a discharge violation.

12. Plaintiff's claims are barred, in whole or in part, because Plaintiff has failed to allege and prove all conditions precedent to recovery.

13. Plaintiff's claims are barred, in whole or in part, because Sun West's acts and/or omissions were not the cause of Plaintiff's damages, if any. Instead, Plaintiff's damages, if any, were proximately caused by the acts, omissions, or breaches of other persons and/or entities, including Plaintiff himself, and the acts, omissions, or breaches were intervening and superseding causes of Plaintiff's damages, if any.

14. Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to mitigate his damages, if any.

15. Plaintiff's attorneys' fees and costs are not recoverable, reasonable, or necessary.

16. Sun West reserves the right to assert such additional affirmative defenses that are available under the facts and applicable law.

PRAAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Sun West Mortgage Company, Inc. prays (a) Plaintiff be awarded no relief on the allegations asserted in his Complaint and take nothing, (b) the Court dismiss Plaintiff's claims with prejudice, (c) Sun West be awarded recovery of its attorneys' fees and costs under 17 U.S.C. §505 or any other applicable provision, and (d) the Court grant Sun West any additional relief, at law or in equity, to which it may be entitled.

Respectfully submitted,

/s/ W. Scott Hastings

W. Scott Hastings
Texas Bar No. 24002241
shastings@lockelord.com

Matthew K. Hansen
State Bar No. 24065368
mkhansen@lockelord.com
LOCKE LORD LLP
2200 Ross Avenue, Suite 2800
Dallas, Texas 75201-6776
Telephone: (214) 740-8000
Facsimile: (214) 740-8800

**ATTORNEYS FOR DEFENDANT SUN WEST
MORTGAGE COMPANY, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record via email and/or the Court's CM/ECF system on this 19th day of May, 2021.

/s/ W. Scott Hastings

W. Scott Hastings